

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 CS Automated External Defibrillators
SPONSOR(S): Henriquez & others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 976

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Health Care General Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Cicccone</u>	<u>Brown-Barrios</u>
2) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Ferguson</u>	<u>Kramer</u>
3) <u>Health Care Appropriations Committee</u>	<u>12 Y, 0 N</u>	<u>Money</u>	<u>Massengale</u>
4) <u>Health & Families Council</u>	<u>8 Y, 0 N, w/CS</u>	<u>Cicccone</u>	<u>Moore</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

An Automatic External Defibrillator (AED) is a small, lightweight device used to assess a person's heart rhythm, and, if necessary, administer an electric shock to restore a normal rhythm in victims of sudden cardiac arrest. AEDs are designed to be used by people without medical backgrounds, such as police, firefighters, flight attendants, security guards, and lay rescuers. House Bill 93 CS defines the term *automated external defibrillator* as referenced in section 768.1325(2) (b), Florida Statutes, and also defines the term *defibrillation*.

The bill also creates a misdemeanor offense for tampering with or rendering an AED inoperable; however, this section will not apply to the owner of an AED or the owner's authorized representative or agent.

The bill requires the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device about the liability immunity provided in section 768.1325, Florida Statutes.

Because there is no requirement in the bill as to how the educational campaign should be implemented, the department may post the information on the department's website. Therefore, no significant state fiscal impact is expected.

The effective date of this bill is July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – The bill creates criminal penalties for intentional or willful conduct.

B. EFFECT OF PROPOSED CHANGES:

Cardiac Arrest

The American Heart Association (AHA) describes a cardiac arrest as:

[t]he sudden, abrupt loss of heart function. It is also called sudden cardiac arrest or unexpected cardiac arrest. Sudden death (also called sudden cardiac death¹) occurs within minutes after symptoms appear. The most common underlying reason for patients to die suddenly from cardiac arrest is coronary heart disease. Most cardiac arrests that lead to sudden death occur when the electrical impulses in the diseased heart become rapid (ventricular tachycardia) or chaotic (ventricular fibrillation) or both. This irregular heart rhythm (arrhythmia) causes the heart to suddenly stop beating.

According to the AHA, brain death and permanent death start to occur within 4 to 6 minutes after someone experiences cardiac arrest. Cardiac arrest can be reversed if it is treated within a few minutes with an electric shock to the heart to restore a normal heartbeat—a process called defibrillation. The AHA states that a victim's chances of survival are reduced by 7 to 10 percent with every passing minute without defibrillation, and few attempts at resuscitation succeed after 10 minutes.

An Automated External Defibrillator (AED) is an electronic device that can shock a person's heart back into rhythm when he or she is having a cardiac arrest. The AHA estimates that more than 95 percent of cardiac arrest victims die before reaching the hospital. In cases where defibrillation is provided within 5 to 7 minutes, the survival rate from sudden cardiac arrest can be up to 49 percent.

Section 401.2915, Florida Statutes, provides the minimum requirements for an individual who intends to use an AED in cases of cardiac arrest, as follows:

- A person must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an automated external defibrillator;
- A person or entity in possession of an automated external defibrillator is encouraged to register with the local emergency medical services medical director the existence and location of the automated external defibrillator; and
- A person who uses an automated external defibrillator is required to activate the emergency medical services system as soon as possible upon use of the automated external defibrillator.

1990 Legislation

In 1990, based on the development of AED technology and in an effort to reduce the death rate associated with sudden cardiac arrest, the Legislature enacted section 401.291, Florida Statutes. This law broadened the list of persons authorized to use an AED to include “first responders.” First responders included police officers, firefighters and citizens who are trained as part of locally coordinated emergency medical service response teams. At that time, to use an AED, a first responder had to meet specific training requirements, including;

- Certification in CPR.
Or—
- Successful completion of an eight hour basic first aid course that included CPR training.
- Demonstrated proficiency in the use of an automatic or semiautomatic defibrillator.
- Successful completion of at least six hours of training, in at least two sessions, in the use of an AED.

At the time, the creation of section 401.291, Florida Statutes, was intended to increase the availability of automatic external defibrillators, and thereby, reduce the death rate from sudden cardiac arrest in Florida. It is undocumented as to whether the intended effect was ever achieved; however, the law was repealed in 1997.

Deregulating AED

Chapter 97-34, Laws of Florida, repealed section 401.291, Florida Statutes, thereby deregulating the use of an AED. The bill created section 401.2915, Florida Statutes. (see above)

Tort Liability

Section 768.1325, Florida Statutes, the Cardiac Arrest Survival Act, provides immunity from liability for a person who uses or attempts to use an automated external defibrillator device in a perceived medical emergency. Under section 768.1325(2) (b), Florida Statutes, “automated external defibrillation” device is defined as a defibrillator device that:

- Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act.
- Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed.
- Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

Section 768.1325 (3), Florida Statutes, provides exceptions in that any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency is immune from civil liability. In addition, any person who acquired the device for a community organization is immune from civil liability if the harm was not a result of the failure of such acquirer of the device to:

- Notify the local emergency medical services medical director of the most recent placement of the device within a reasonable period of time after the device was placed.
- Properly maintain and test the device.
- Provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:

1. The employee or agent was not an employee or agent who would have been reasonably expected to use the device.

2. The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

Effect of Bill

House Bill 93 CS amends section 401.2915, Florida Statutes, to define the term automated external defibrillator as a lifesaving device that:

- Is commercially distributed as a defibrillation device in accordance with the Federal Food, Drug, and Cosmetic Act.
- Is capable of recognizing the presence or absence of ventricular fibrillation and is capable of determining, without intervention by the use of the device, if defibrillation should be performed.
- Is capable of delivering an electrical shock to an individual, upon determining that defibrillation should be performed.

This definition conforms to the definition in section 768.1325(2) (b), Florida Statutes.

The bill also defines defibrillation as the administration of a controlled electrical charge to the heart to restore a viable cardiac rhythm.

The bill creates a first degree misdemeanor for any person who intentionally or willfully:

- a) Tamper with or otherwise renders an automated external defibrillator inoperative except during such time as the automated external defibrillator is being serviced, tested, repaired, or recharged, except pursuant to court order.
- b) Obliterates the serial number on an automated external defibrillator for purposes of falsifying service records.

Paragraph (a) does not apply to the owner of the automated external defibrillator or the owner's authorized representative or agent. A first degree misdemeanor is punishable by up to one year in jail and a fine of up to \$1,000.

The bill directs the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device of the immunity from liability under section 768.1325, Florida Statutes.

C. SECTION DIRECTORY:

Section 1. Amends section 401.2915, Florida Statutes, to define terms and provide criminal penalties.

Section 2. Creates an unnumbered section of law and requires the Department of Health to implement an educational campaign to inform any person who acquires an automated external defibrillator device about the liability immunity and provides a cross reference to section 768.1325, Florida Statutes.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The bill does not require the medium that should be used for the educational campaign. According to the DOH, an insignificant fiscal impact will be incurred if the department uses the department's website to provide the information regarding equipment maintenance, testing and user training.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill creates a misdemeanor fine of up to \$1,000; however, the revenue impact is indeterminate at this time.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health has sufficient rulemaking authority to implement the requirements of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On November 9, 2005, the House Health Care General Committee passed House Bill 93 CS with one amendment, which referenced the definition of an Automatic External Defibrillator (AED) currently in s. 768.1325(2)(b) F.S.

The House Health Care General Committee passed House Bill 93 with this amendment as House Bill 93 with Committee Substitute.

On January 11, 2006, the Criminal Justice Committee passed House Bill 93 with two amendments. The bill made it a misdemeanor for any person to render an AED inoperable. The first amendment provided that this does not apply to the owner of the AED or the owner's agent. The second amendment deleted the provision authorizing local governments to adopt an ordinance to license, permit, or inspect AEDs and providing enforcement of such local ordinances.

On April 10, 2006, the House Health & Families Council passed HB 93 CS with two amendments and reported the bill favorably with Council substitute:

- Amendment #1: Modifies the exemption from criminal liability to include an owner's "authorized representative."
- Amendment #2: Provides a cross reference to section 768.1325, Florida Statutes, regarding liability immunity during use of automated external defibrillator devices.

The analysis reflects the bill as a Council substitute.